

1979 WL 42956 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 23, 1979

*1 Richard Ruhle, Esquire
Attorney
City of Anderson
Post Office Box 107
Anderson, South Carolina 29622

Dear Mr. Ruhle:

In response to your request for an opinion from this Office as to whether or not the reduction in size of a proposed municipal improvement district would invalidate the previously-obtained consenting petition to create such a district, my opinion is that such reduction would not invalidate the petition as hereinbelow discussed.

[Sections 5-37-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, the 'Municipal Improvement Act of 1973,' set forth the requirements for creating, financing and maintaining a municipal improvement district. Section 5-37-40 provides in part that:

. . . the governing body shall, prior to the enactment of the ordinance creating the improvement district, obtain written consent for the creation of such improvement district from a majority in number of the owners of real property within the district and having an aggregate assessed value in excess of sixty-six percent of the assessed value of all real property within such improvement district.

My understanding is that, even with the reduction in area, the original consenting petition contains the signatures of a majority in number of the property owners within the proposed district and that those property owners own in excess of sixty-six (66%) percent of the assessed value of all real property therein. I further understand that the rate of assessment agreed upon by the consenting petitioners will not be altered by the change in the area of the proposed district. Moreover, Section 5-37-100 provides in part that, after the required public hearing upon a proposed improvement district is held:

. . . the governing body may, by ordinance, provide for the creation of the improvement district as originally proposed or with such changes and modifications therein as the governing body may determine, . . . [Emphasis added.]

As the underlined language indicates, the governing body is free to alter the proposed improvement district before enacting the ordinance which will create it but after the consenting petition has been obtained.

For all of these reasons, I think that the reduction in size of a proposed municipal improvement district does not necessitate a second consenting petition.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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